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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,188	05/09/2001	Ilham Mohamed Saleh Saeed Abujadayel	674528-2003.1	6161
20999	7590	06/07/2011	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			CANELLA, KAREN A	
ART UNIT	PAPER NUMBER			
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/853,188 Examiner KAREN CANELLA	Applicant(s) ABULJADAYEL, ILHAM MOHAMED SALEH SAEED Art Unit 1643
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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 March 2011.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) See Continuation Sheet is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5,7,11,13,15,17,19,20,22,23,25,26,28-32,34-41,101 and 104-107 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 - 1) Certified copies of the priority documents have been received.
 - 2) Certified copies of the priority documents have been received in Application No. _____.
 - 3) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application
6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1-3,5,7,11,13,15,17,19,20,22,23,25,26,28-32,34-41,101 and 104-107.

DETAILED ACTION

Claims 1, 2, 3, 11, 13, 40, 41 and 101 have been amended. Claims 4, 6, 8-10, 12, 14, 16, 21, 24, 27, 33, 42-100, 102 and 103 are canceled. Claims 1-3, 5, 7, 11, 13, 15, 17, 19, 20, 22, 23, 25, 26, 28-32, 34-41, 101 and 104-107 are pending and under consideration.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The rejection of claims 1-3, 5, 7, 11, 13, 15, 17, 19, 20, 22, 23, 25, 26, 28-32 and 34-41 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is withdrawn in light of applicant's arguments regarding the broadest reasonable interpretation.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3, 5, 7, 11, 13, 15, 17, 19, 20, 22, 23, 25, 26, 28-32, 34-41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1, 2, 40 and 41 have been amended to recite "transfer means communicating between the input storage container and the chamber"

Claim 3 has been amended to recite "transfer means is configurable to transfer a pre-determined amount of the cell population from the storage container to the chamber".

Claims 1, 2, 40 and 41 have been amended to recite "transfer means communicating between the input storage container and the chamber for transferring the cells from the storage container to the chamber.

Applicant has cited page 9, line 4 to page 10, line 5 and page 129, paragraph 6 in support for this amendment. This has been considered but not found persuasive. When given the broadest reasonable interpretation, "transfer means communicating between the input storage container and the chamber requires a data transfer at both ends of the transfer means that would result in "communication" between the two ends of the transfer means. Page 9, lines 11-13 recite "transfer means for transferring an amount (such as a pre-determined amount) of a cell population from a storage container to the chamber, which transfer means may optionally comprise a pump". Page 10, lines 13-15 recite "the transfer means (iii) may comprise a peristaltic pump, which pump transfers a cell population from a storage container via interconnecting means, tubing for instance, to the chamber". Page 129, paragraph 6 recites "transfer means for transferring an amount of said cell population from a storage container to said chamber". These disclosures fail to support the instant requirement of a communicating transfer means because there is no exchange of information between the input storage container and the chamber.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The rejection of claims 101, 104, 105 and 107 under 35 U.S.C. 103(a) as being unpatentable over Palsson et al (U.S. 5,888,807) is maintained for reasons of record.

Claim 101 has been amended to require a carbon dioxide control means for introducing an amount of carbon dioxide into the heated incubation chamber. Applicant argues that there is no motivation to do so because Palsson et al teach that "carbon dioxide must be removed". This

has been considered but not found persuasive. Palsson et al teach gas inlets and exits in Figures 6F and 7a. Palsson et al teach that gas is supplied to the chamber via a cylinder of pre-mixed gas comprising carbon dioxide (column 23, lines 28-31). Gas cylinders are under pressure and therefore require a pressure regulator and a flow regulator for use in tissue culture.

Therefore the disclosure of Palsson et al regarding the gas cylinder as a source of gas including carbon dioxide includes a regulator for use of the gas cylinder and therefore meets the limitation of a control means for introducing an amount of carbon dioxide into the heated incubation chamber.

All other rejections and objections as set forth or maintained in a prior Office action are withdrawn.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN CANELLA whose telephone number is (571)272-0828. The examiner can normally be reached on 9:30-6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Misook Yu can be reached on (571)272-0839. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karen A Canella/
Primary Examiner, Art Unit 1643